

## Supreme Court decision acts as warning to trustees to act impartially and reasonably towards beneficiaries.

### In its cost decision in *Lambie Trustee Limited v Addleman*<sup>1</sup> the Supreme Court has reiterated that trustees must act impartially and reasonably, particularly in respect of disclosure of trust information to a beneficiary.

#### Summary

The Supreme Court case of *Lambie Trustee Limited v Addleman*<sup>2</sup> and subsequent cost decision<sup>3</sup> provides important clarification on a trustee's duty to act impartially and reasonably when administering a trust.

On 1 June 2021 the Supreme Court issued its judgement in the long-running trust dispute between the trustee of The Lambie Trust, Lambie Trustee Limited (**Lambie Trustee**), and Prudence Addleman, one of the beneficiaries of the Trust.

The Court unanimously held that Lambie Trustee was obliged to disclose to Mrs Addleman all legal advice funded by the Trust and received by it prior to the commencement of Mrs Addleman's proceedings against the Trust. This was despite the fact Lambie Trustee sought and relied upon legal guidance as to whether or not it should disclose certain 'trust information' requested by Mrs Addleman.

Now, some 18 months later, the Court has issued its cost decision in respect of that case, as follows:

- (a) Mrs Addleman is to be paid her out of pocket expenses and disbursements in relation to her proceeding in the Court of Appeal and Supreme Court from the Trust property;

- (b) Lambie Trustee is denied an indemnity out of the Trust property. This has the practical effect that Lambie Trustee has no right to be reimbursed for its own expenses (including legal fees) out of the Trust assets; and
- (c) Lambie Trustee must reimburse the Trust (from non-Trust assets) for any costs paid out of the Trust property in respect of the Court proceedings.

#### Key Learnings from This Case

The costs award by the Supreme Court provides three important reminders to trustees:

- 1 Trustees must act reasonably when deciding whether or not to give trust information to a beneficiary. If the trustees take legal advice on this duty, they may not necessarily be entitled to rely on that advice to show it has acted reasonably, and prudent trustees should also consider whether they need to seek directions from the court.<sup>4</sup>
- 2 Trustees must be aware of their obligation to act impartially in relation to the beneficiaries and must not be unfairly partial to one beneficiary or group of beneficiaries to the detriment of others.
- 3 The right of an independent trustee to be indemnified out of trust assets only applies in respect of reasonable costs and expenses incurred in the administration of the Trust. In this case, the Court found that Lambie Trustee did not act reasonably and accordingly the right to be indemnified was void.

The right to be indemnified from trust assets is a particularly important consideration for independent trustees and trustee companies. Often a trustee company is formed for the sole purpose of providing independent trustee services and has no

<sup>1</sup> *Lambie Trustee Limited v Addleman* [2023] NZSC 7

<sup>2</sup> *Lambie Trustee Limited v Addleman* [2021] NZSC 54

<sup>3</sup> *Lambie Trustee Limited v Addleman*, above, n 1 at [20]

<sup>4</sup> *Re Beddoe* [1893] 1 Ch 547

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assets of its own. If a court determines that an indemnity does not apply, and the trustee company holds no assets, the liability to meet those costs may fall to the directors of the trustee company, personally. Similarly, independent trustees who offer trustee services in their personal capacity may be required to personally meet any trust liabilities if they are not able to rely on an indemnity out of trust assets.

**Advice to Trustees**

If in doubt about the exercise of trustee powers under a Trust Deed, or the application of trustee's duties under the Trusts Act 2019, trustees are advised to seek legal advice on their obligations and act carefully. This is particularly important where trustees are being asked to side with one beneficiary to the detriment of another.

**Want to know more?**

If you have any questions regarding your duties as trustees please contact our [Trusts specialists](#).